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January 7, 2008

To: Supervisor Yvonne B. Burke, Chair
Supervisor Gloria Molina
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Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

MOTION TO SUPPORT PROPOSITION 91, THE TRANSPORTATION FUNDING PROTECTION ACT OF 2006, ON THE FEBRUARY 5, 2008 BALLOT, (ITEM NO. 67-B, AGENDA OF JANUARY 8, 2008)

Item No. 67-B on the January 8, 2008 Agenda is a motion by Supervisor Antonovich to support Proposition 91 in order to protect the County's local transportation revenues and to ensure that these funds are used for their intended purpose.

In March 2002, the California voters passed Proposition 42, the Transportation Congestion Improvement Act, which earmarked the sales taxes on gasoline and diesel fuel for specified transportation purposes. Following the passage of Proposition 42, the State was still able to divert some of those funds away from transportation because such action was not specifically prohibited.

According to the Legislative Analyst's Office (LAO), the State has suspended the Proposition 42 transfer twice since 2002 because of the State's fiscal condition, diverting \$3.3 billion in gasoline taxes from relieving traffic congestion, repaving streets, improving traffic safety, and expanding mass transit. In an effort to address this issue, a coalition of transportation interests began gathering signatures to put a measure on the ballot to stop these transfers. Legislative leaders and the Governor reached an agreement to place Proposition 1A, the Proposition 42 Protection Act, on the ballot which was passed in November 2006 by 77 percent of the voters.

Proposition 1A of 2006 modified the provisions in the State Constitution that allow for the suspension of the transfer of Proposition 42 gasoline sales tax revenues by the State to the Transportation Investment Fund (TIF) in order to further limit the conditions under which the transfer of these funds can be suspended. The transfer of Proposition 42 revenues to the TIF also could be suspended in whole or in part for a fiscal year during a fiscal emergency pursuant to a proclamation by the Governor declaring that the transfer of transportation funds will have a "significant negative fiscal impact on the range of functions of government funded by the State General Fund," and the enactment of a statute by a two-thirds vote in each house of the Legislature, if the statute does not contain any unrelated provision.

The passage of Proposition 1A made it more difficult for the State to suspend the transfer of Proposition 42 funds by requiring the Governor to issue a proclamation declaring that the suspension is necessary "due to a severe State fiscal hardship." The Legislature is still required to pass a statute containing no other unrelated provisions by a two-thirds vote of each house to suspend the transfer of funds.

In addition, Proposition 1A: 1) requires any loan be made pursuant to a statute that provides for the full repayment to the TIF with interest, and that the repayment is made within three years of the suspension; 2) prohibits the suspension in more than two fiscal years over any 10 year period; 3) prohibits any suspension if full payment as required by a statute enacted in accordance with the bill has not yet been completed; 4) requires that any funds currently loaned from the TIF prior to January 1, 2006 be repaid no later than June 30, 2016, and require that annual payments on the loan be no less than one-tenth of the total amount outstanding; and 5) allows the Legislature to provide by statute for the issuance of bonds by the State or local agencies that are secured by the minimum payments required above.

Overall, Proposition 1A makes it more difficult to use Proposition 42 gasoline sales tax revenues for non-transportation purposes when the State experiences fiscal difficulties. As part of the Proposition 1A agreement, supporters of the stronger measure agreed to stop collecting signatures, but enough signatures had already been gathered to qualify the measure (Proposition 91) for the next statewide election on February 5, 2008.

Proposition 91

Proposition 91 would eliminate the State's authority to suspend the transfer of gasoline sales tax revenues to TIF for transportation uses and would prohibit the use of these revenues for non-transportation purposes. In addition, the measure requires that amounts suspended in FY 2003-04 and FY 2004-05 be repaid by June 30, 2017, with the amount of that repayment to be made in each fiscal year to be not less than one-tenth of the total amount due. Furthermore, Proposition 91 deletes the authority to loan transportation funds

to the General Fund for multiple years. These funds could still be loaned to the General Fund for short-term cash flow purposes within a fiscal year, and must be repaid within 30 days of the adoption of a budget for the following fiscal year.

The LAO indicates that by deleting the State's authority to suspend the transfer of gasoline sales tax revenue to TIF and limiting the State's ability to borrow these funds, the measure would make State funding from these sources for highways and streets and roads more stable and predictable from year to year. At the same time, the LAO indicates this measure may be interpreted to allow public transit funds, which are not part of the TIF, to be loaned to the General Fund with no express time limitation for repayment, which may make the availability of these funds for public transit less stable. The Department of Public Works (DPW) concur with the LAO's interpretation, and states that LAO's assessment that this measure may make the availability of public transit funds less stable is not a result of Proposition 91 if passed, but it is due to existing law which does not protect public transit funds from being loaned to the General Fund.

The County has existing policy to support the protection of revenues received from the sales taxes on gasoline under Proposition 42 to ensure that these funds are used to fund transportation improvements. However, the County did not take a position on Proposition 1A which restricts the State's ability to loan/borrow transportation funds. Since Proposition 91 goes further in restricting the State's authority to loan and borrow transportation funding for non transportation purposes than Proposition 1A, and the County did not take a position on 1A, **a position on Proposition 91 is a matter for Board policy determination.**

Support and opposition to Proposition 91 is unknown. However, the original proponents of the measure are now urging voters to reject Proposition 91 because the primary issues have already been addressed with the passage of Proposition 1A.

WTF:GK
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c: Executive Officer, Board of Supervisors
County Counsel
Department of Public Works